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March 9, 2009

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 31, 2008

Case Number: TSO-0687

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ In this Decision, I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the DOE should not restore the individual's access authorization at this time.

I. Background

Prior to being granted a clearance, the individual completed a Questionnaire for National Security Positions (QNSP) in November 2004 in which he answered "no" to a question asking whether he had used any controlled substance "[s]ince the age of 16 or in the last 7 years, whichever is shorter," Exhibit 12. The individual answered "no" to the same question on an October 2007 QNSP, during the process of application for an upgrade of his security clearance. Exhibit 11. However, according to the report of an investigator from the U.S. Office of Personnel Management (OPM), the individual stated in an interview on December 17, 2007, that he had used marijuana in the past and that the "last time the subject used the drug was on February 9, 2000, his 16th birthday." Exhibit 14 at 67. Moreover, in a Personnel Security Interview (PSI) conducted on July 24, 2008, the individual was asked when he last used marijuana, and responded, "It was around my birthday. And, uh, it's either birthday 16 or birthday 17. I'm inclined to say birthday 17." Exhibit 13 at 15.

The Local Security Office (LSO) ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to him.

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Accordingly, the LSO proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for access authorization. Specifically, the DOE characterized this information as indicating that the individual (1) has deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive Positions, a Personnel Qualifications Statement, a personnel security interview, in written or oral statements made in response to an official inquiry regarding his eligibility for DOE access authorization, or proceedings conducted pursuant to Part 710 Sections 710.20 through 710.31; (2) has trafficked in, sold, transferred, possessed, used or experimented with a drug or other substance listed in the schedule of Controlled Substances established pursuant to Section 202 of the Controlled Substances Act of 1970, except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by law; and (3) has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security. Exhibit 3 (citing 10 C.F.R. § 710.8(f), (k), (l) (Criteria F, K, and L, respectively).

The Notification Letter informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual requested a hearing, and the LSO forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on November 3, 2008.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from a DOE Personnel Security Specialist, the individual, his supervisor, two project leaders, a co-worker, two long-time friends, his parents, and a licensed clinical psychologist. The DOE Counsel submitted sixteen exhibits prior to the hearing and one exhibit at the hearing; counsel for the individual presented one exhibit.

II. Regulatory Standard

A hearing under Part 710 is held "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization," *i.e.*, "to have the substantial doubt regarding eligibility for access authorization resolved." 10 C.F.R. § 710.21(b)(3), (6). It is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I

am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).² After due deliberation, I have determined that the individual's access authorization should not be restored. The specific findings that I make in support of this decision are discussed below.

III. The Notification Letter and the Security Concerns at Issue

As the basis for security concerns under Criterion F,³ the Notification Letter cites the individual's discrepant responses to questions regarding his drug use on his 2004 and 2007 QNSPs and in his July 2008 PSI, and further alleges that, during the 2008 PSI, "he admitted he deliberately omitted his illegal drug use from his" 2007 QNSP. Exhibit 1 at 1. Though, as is discussed below, the individual disputed at the hearing that he deliberately omitted information regarding his drug use from his QNSPs, the undisputed discrepancy between the answers he provided on the QNSPs and those provided at the 2008 PSI clearly raises questions about his reliability, trustworthiness and ability to protect classified information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines) at ¶ 15 ("Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.")

Under Criterion K,⁴ the Notification Letter cites the individual's use of marijuana over several years, as recently as 2001. Exhibit 1 at 1. There are significant security concerns associated

² Section 710.7(c) lists the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

³ Criterion F concerns information that an individual has "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to Sec. 710.20 through Sec. 710.31" of 10 C.F.R. Part 710. 10 C.F.R. § 708.8(f).

⁴ Criterion K concerns information that an individual has "[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law." 10 C.F.R. § 708.8(k).

with the use of illegal drugs. Engaging in criminal conduct can raise questions about a person's ability or willingness to comply with laws, rules, and regulations. *See* Adjudicative Guidelines at ¶ 24. Moreover, illegal drugs can impair a person's judgment which, in turn, can raise questions about the person's reliability and trustworthiness. *Id.* Thus, the individual's prior drug use raises legitimate concerns under Criterion K.⁵

Under Criterion L,⁶ the Notification Letter states that the individual deliberately omitted information regarding his marijuana use from the 2007 QNSP, despite having signed two "Security Acknowledgement" forms attesting to his understanding that such an omission "may raise a doubt as to my eligibility for DOE access authorization." Exhibit 1 at 2; Exhibits 8, 9 (security acknowledgement forms). Referring to the same criterion, the Notification Letter cites the individual's admission of association with individuals who he knew used illegal drugs, despite having signed the same "Security Acknowledgement" forms, attesting to his understanding that his "involvement with any illegal drug[] could result in the loss of my DOE access authorization." Exhibit 1 at 2; Exhibits 8, 9. After an individual has been put on notice that specific behavior can jeopardize his eligibility for a security clearance, engaging in such behavior raises questions regarding the judgment of the individual, beyond those that would be raised in the absence of such notice. Conduct demonstrating poor judgment in turn raises legitimate concerns regarding an individual's reliability in the security context. *See* Adjudicative Guidelines at ¶ 15 ("Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.").

IV. Hearing Officer Evaluation of Evidence

I have found above that the conduct of the individual as set forth in the Notification Letter raises legitimate security concerns. I now must determine whether these concerns have been resolved such that, "after consideration of all relevant information, favorable and unfavorable, . . . the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). For the reasons set forth below, I find that the concerns raised under Criteria K and L regarding the individual's past drug use and associations have been resolved, but that the concerns raised under Criteria F and L regarding the individual's omission of information from his 2004 and 2007 QNSPs remain unresolved. I therefore do not find that restoring the individual's access

⁵ The Notification Letter also cites the individual's use of his mother's prescription allergy medications, Flonase, Claritin, and Allegra, during the summer or fall of 2007. However, prior to the hearing in this matter, the DOE counsel informed me and counsel for the individual that, "since these medications are not mood or behavior altering substances the DOE is withdrawing the security concerns relating solely to the Individual's use of Flonase, Claritin, and Allegra." Electronic mail from DOE Counsel to Steven Goering, OHA (January 5, 2009).

⁶ Criterion L concerns information that an individual has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 708.8(k).

authorization would not endanger the common defense and would be clearly consistent with the national interest.

A. Illegal Drug Use - Criterion K

The individual stated in his 2008 PSI that he used marijuana “no more than five or six times in my life. That’d be spanning from the age of about 12 to 16 or 17.” As noted above, the use of illegal drugs raises significant security concerns. However, the Part 708 regulations instruct me to consider in resolving such concerns, among other things, “the frequency and recency of the conduct; [and] the age and maturity of the individual at the time of the conduct; . . .” 10 C.F.R. § 710.7(c).

Though there is a dispute, discussed below, regarding whether the individual’s last use of marijuana was before or after his 16th birthday, the DOE does not allege that the individual used marijuana after February 2001, the month in which the individual turned 17 years old. *See* Exhibit 17 (chronology of events produced by DOE counsel). The individual’s use of marijuana appears to have been infrequent, the most recent use being at least eight years ago, when the individual was a minor. At the hearing, the DOE Personnel Security Specialist testified that, “based on the minimal amount that he used and the passage of -- passage of time, if you will, in and of itself, there would be no (k). . . .” Tr. at 305. “If we were going to take this case to administrative review today . . . I don't believe (k) would be an issue . . . in and of itself.” *Id.* at 306.

I agree with the assessment of the Personnel Security Specialist, based on the infrequency of the individual’s use, his age at the time of use, and the passage of time since. *See* Adjudicative Guidelines at ¶ 26(a) (listing as a condition that could mitigate concerns arising from illegal drug use that “the behavior happened so long ago, . . . that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment”). Another relevant factor cited by the Personnel Security Specialist was the individual’s future intent with regard to illegal drugs, Tr. at 305, and in the present case the individual convincingly testified as to his intent to “completely” abstain from using illegal drugs in the future, *id.* at 271, and to not associate with those who do so. *Id.* at 248; *see* Adjudicative Guidelines at ¶ 26(b) (listing as a condition that could mitigate concerns arising from illegal drug use “a demonstrated intent not to abuse any drugs in the future, such as: . . . dissociation from drug-using associates and contacts”). Taking into account the above factors, I find the concerns raised in this case under Criterion K have been resolved.

B. Association with Users of Illegal Drugs – Criterion L

In his July 2008 PSI, the individual freely admitted that a “couple of my friends use marijuana and I’ve told them not to use it around me.” Exhibit 13 at 23. He further stated that he associated with these friends “[m]aybe once a month. They’re actually moving away this month to [another state]” and he did not think he would have contact with these individuals once they

moved. *Id.* at 24. At the PSI, a DOE Personnel Security Specialist (PSS)⁷ asked the individual to read a DOE Drug Certification, and asked whether he would be willing to sign it if it was presented to him at a later date. *Id.* at 30-32. The Drug Certification states that the signer agrees, among other things, that he will not “be involved with illegal drugs” and that “[i]nvolvement includes knowingly being in the presence of others who are in the possession of these illegal drugs.” U.S. Department of Energy Drug Certification, DOE F 5631.

[Individual]: (Pause to read Drug Certification.) Okay. I see this. Involvement includes knowingly being in the presence of other who are in the possession of these illegal drugs. Okay, I’m, I’m willing to sign this.

[PSS]: Okay. Now do you understand the word, being involved with illegal drugs?

[Individual]: Yeah, being in the presence of anyone that is, even has them.

[PSS]: Right or if you have knowledge that they use drugs, being in their presence.

Exhibit 13 at 31.

The Personnel Security Specialist further stated that if “if DOE learns that you are associating with anyone that you have knowledge of using drugs, then it could cost you your clearance. . . . [I]f you’re hanging out with them knowing that they do that, then you’re, you’re involving and condoning their behavior.” *Id.* Presented with this definition of “involvement” with illegal drugs, the individual stated that he would agree to sign a Drug Certification. *Id.* at 34. However, it is apparent from the transcript of the July 2008 PSI that, until the PSI, the individual did not have such a broad understanding of what the DOE considered to be involvement with illegal drugs. Thus, early in the interview the individual stated that he had told the two friends who he knew were users of marijuana “not to use it around me.” *Id.* at 23.

There is no dispute that in 2004 and again in 2007, the individual in this case signed a DOE Security Acknowledgment form stating that he understood, among other things, that “involvement with any illegal drug[] could result in the loss of my DOE access authorization.” DOE Exhibit 8, 9. The individual does not deny that he understood this. The form, however, does not explain or define what is meant by “involvement” with illegal drugs. As such, I can see why one would not understand the meaning to include being in the presence of individuals who are users of illegal drugs, even if those individuals are not in the possession of such drugs. Indeed, as noted above, the Drug Certification shown to the individual at the PSI does not

⁷ The Personnel Security Specialist who conducted the July 2008 PSI is no longer employed by the DOE, and is not the same Personnel Security Specialist who testified at the hearing in this matter. Tr. at 50.

explicitly contain such a broad definition, only specifying that “[i]nvolvement includes knowingly being in the presence of other who are in the possession of these illegal drugs.”

Considering these circumstances, I do not think it reflects negatively on the individual’s judgment that, after signing the DOE Security Acknowledgement, he was in the presence of individuals whom he knew were users of marijuana where those users were not, to his knowledge, in the possession of marijuana. As for the possibility of any future associations, it is clear that the individual now understands the broader definition of “involvement” and testified at the hearing that he does not intend to associate in the future with people who use marijuana. Tr. at 248. “[I]n fact, I ask people now when’s the last time they used marijuana and if they have any intent to use it again,” *Id.* Thus, I find any security concerns stemming from the individual’s past associations with users of illegal drugs to be resolved.

C. Omissions from 2004 and 2007 QNSPs - Criteria F and L

1. The Individual’s Hearing Testimony Regarding Discrepancies Between QNSPs, December 2007 OPM Interview, and July 2008 PSI

In the present case, the individual contends that he was truthful in his responses to the 2004 and 2007 QNSP. At the hearing, he testified that he last used marijuana at his “16th birthday party, which would have been a few days before my actual 16th birthday.” Tr. at 208. Thus, according to the individual, the inaccurate accounts of his most recent marijuana use are those reflected in the OPM report, Exhibit 14, and the transcript of the July 2008 PSI, Exhibit 13.

As noted above, the OPM investigator’s report of his December 2007 interview with the individual states that the “last time the subject used the drug was on February 9, 2000, his 16th birthday.” Exhibit 14 at 67.⁸ At the hearing, the individual testified that he “probably told [the OPM investigator] it was my birthday party and he asked me when my birthday was, and I’m going to assume he ran those two together, . . .” Tr. at 221. The individual explained that “my 16th birthday was in the middle of the week, . . . [and] there wouldn’t have been parties in the middle of the week as a sophomore in high school.” *Id.* at 221-22.

Also inconsistent with the individual’s account at the hearing of his last use of marijuana, the transcript of the July 2008 PSI contains no reference to his 16th birthday party or that the party took place before his 16th birthday. Instead, at the PSI the individual stated that his marijuana use spanned “from the age of about 12 to 16 or 17.” Exhibit 13 at 15. Then asked when he last used marijuana, the individual responded that it “was around my birthday. And, uh, it’s either birthday 16 or birthday 17. I’m inclined to say birthday 17.” *Id.* Later in the interview, the Personnel Security Specialist asked the individual why, in light of his previous answer, he would

⁸ The Personnel Security Specialist testified, Tr. at 64-65, and the individual does not dispute, *id.*, that had his last use of marijuana been *on* his 16th birthday, he would have been required on the November 2004 QNSP to answer “yes” to the question asking whether he had used any controlled substance “[s]ince the age of 16 or in the last 7 years, whichever is shorter,” Exhibit 12.

have answered “no” to the relevant question on the 2004 QNSP. *Id.* at 35. “Well, I probably read that age 16. And I probably said to myself, well, it was right around that time and I wasn’t sure in my head if it was before or after 16, so I just put no.” *Id.* Regarding his answer to the same question on the 2007 QNSP, the individual stated, “I don’t know, I, I, I told the investigator, ‘cause I was worried about it when, when I, I said, okay, maybe these incidents, uh, had happened after age 16, so I told the investigator without him prompting me. I’d—maybe I just slipped up when I did it.” *Id.* at 37.

In his hearing testimony, the individual offered no credible explanation as to why his statements throughout the 2008 PSI were at such variance with his account at the hearing.

I don’t know why I said what I did. I said 16 or 17, and that was wrong.

....

You get one thing wrong, and you can just -- if you get that wrong, then you can just start to question yourself, and you can say, well -- you know, I convinced myself maybe that she -- I opened up this line of questioning for her, and I followed my own lead.

Tr. at 208, 209-10.

2. Testimony of Licensed Clinical Psychologist

As a possible explanation for these discrepancies, the individual offered the testimony of a licensed clinical psychologist, who reviewed the allegations in the Notification Letter as well as the transcript of the July 2008 PSI, *id.* at 153-54, and administered a battery of psychological tests, including the Minnesota Multiphasic Personality Inventory-2 (MMPI), the Rorschach test, the Thematic Apperception Test, a Sentence Completion Test, and a Human Figure Drawing Test. *Id.* at 150. The psychologist testified that, on the MMPI, the individual came out “exactly within the norm” on “scales that are very well developed” for determining “whether there’s any characterological tendency to dissemble, to misrepresent,” *Id.* at 155-56. “[H]e does not have any of these characteristics.” *Id.* at 157.

Referring to the results of the Rorschach test, the psychologist testified that,

a possibility of understanding what happened, is that there is some tendency, there is a characteristic, . . . which we call underincorporation, and in some situations, and for him social situations, there is a tendency to be too cursory in offering opinions and offering facts, and that he will sometimes say things without sufficient attention to them in a social situation and continue as if his miss -- as if his misspoken statement of his date, which he gave as an estimate, it then

becomes solid in the rest of the conversation, because he gave it as an estimate, as a possibility. "I'm inclined to say," but then that becomes reified or solid.

Id. at 168.

3. The Concerns Regarding the Individual's Omissions from the 2004 and 2007 QNSPs Remain Unresolved

For a number of reasons, I cannot conclude that the security concerns stemming from the individual's omission of his use of marijuana from the 2004 and 2007 QNSP, particularly in light of the individual's statements at the July 2008 PSI, have been resolved.

First, I found important the individual's testimony that he answered "no" on the 2004 QNSP to the question regarding his drug use "[b]ecause it happened before I was 16." *Id.* at 216; *see also id.* at 253. He further testified that, in completing the 2004 QNSP, he believed he remembered that his use was before the age of 16 for the same reason that he provided at the hearing, i.e., that it occurred at his 16th birthday party, which took place before his 16th birthday. *Id.* at 274. When I asked the individual if he went through a similar thought process when he completed the 2007 QNSP, he responded that he was "probably a little more hesitant at that point because more time has passed." *Id.* at 274. Nonetheless, the individual testified that he answered "no" to the relevant question on the 2007 QNSP *both* because his last use was before the age of 16 and also so that the answers on the 2004 and 2007 QNSPs would be consistent. *Id.* at 264.

If the individual's testimony is to be believed, he twice considered the question of whether he had used marijuana since the age of 16, in November 2004 and October 2007, and both times remembered that his last use had been before his 16th birthday. Yet, in December 2007, when he would have known full well the significance of his 16th birthday with respect to his last use of marijuana, the individual contends that he "probably" told the OPM investigator that his last use was at his 16th birthday party and that he "assume[s]" the investigator concluded that he meant that his last use was *on* his 16th birthday. *Id.* at 221. Further, the individual did not attempt to make clear to the OPM investigator that the party in question took place *before* his birthday, though he would have understood, from completing two QNSPs, the critical significance of this fact. *Id.* at 239. Given this context, the individual's account of the OPM interview seriously strains credulity, particularly in light of the unambiguous statement in the OPM report that the "last time the subject used the drug was on February 9, 2000, his 16th birthday." Exhibit 14 at 67.

As for the individual's statements in his July 2008 PSI, I have no reason to discount the psychologist's opinion that the individual has a tendency toward "underincorporation," and that this provides a "possibility of understanding" what took place at the PSI.⁹ Yet, given the context of the PSI in this case, as explained below, I find that possibility to be exceedingly slim.

⁹ I note that the psychologist's evaluation of the individual was conducted in the week prior to the hearing in this matter, the psychologist did not produce a written report, and counsel for the individual provided the

The psychologist characterizes as “offhand” the individual’s statement in the PSI that he was “inclined” to say his last use of marijuana was around his 17th birthday. Tr. at 174. I asked the psychologist to compare, in terms of the individual’s tendency to underincorporate, the setting of the July 2008 PSI to that of the hearing in this matter. The psychologist noted that in the hearing context, the individual would be under oath and reminded of the penalties for false statements. “Samuel Johnson said, ‘Knowing that you’re going to be hung the next morning focuses your mind.’ . . . I think the context gives a lot of it.” *Id.* at 200, 201.

However, the record indicates that the individual’s mind was similarly focused at the July 2008 PSI. At the beginning of the PSI, the interviewer asked the individual to read “very carefully” a form entitled “Conduct of Personnel Security Interviews Under DOE Security Regulations.” DOE Exhibit 13 at 3. When she asked the individual to explain his understanding of the portion of the form referencing penalties for false statements, the individual responded that “it’s basically, uh, tell the truth or you will go to jail or be fined money.” *Id.* The interviewer followed up by telling the individual that “we just want you to be aware of the severity of . . . any misinformation. Do you have any questions or concerns regarding the form?” *Id.* at 4. The individual responded “no,” and proceeded to sign the form. *Id.* Read in this context, the individual’s responses in the PSI do not appear to be offhand, but are more likely an attempt to answer the questions to the best of his ability, and when not certain, to carefully couch his response in terms such as “I’m inclined to say birthday 17.” *Id.* at 15.

The psychologist further testified that the individual’s responses at the PSI might have been different if he had stopped “to take in other information that he later ha[d] access to,” or to “think of the things that he later put together” in arriving at the version of events he provided at the hearing. Tr. at 174. Yet, the individual would hardly have been caught off guard at the PSI by the importance of when he last used marijuana, having faced this same question on QNSPs in 2004 and 2007, and in the December 2007 OPM interview. Even if the individual’s initial response at the PSI reflected a momentary memory lapse, it is difficult to understand why his recollection of events would not have been refreshed when the interviewer later reminded him of his responses to the two QNSPs. Exhibit 13 at 34-35. Instead, in contrast to his hearing testimony, where he stated he answered “no” to the relevant QNSP questions because he remembered that his last use was before the age of 16, at the PSI he offered that he probably “wasn’t sure in my head if it was before or after 16, so I just put no.” *Id.* at 35.

In the end, I find the individual’s statements at the PSI to be more credible than his hearing testimony, as to when he last used marijuana. I am mindful of the testimony of the individual’s family, friends, and coworkers attesting to their high opinion of his honesty and trustworthiness, *see, e.g.*, Tr. at 32, 87-90, 118-20, 130-31, 133, 140-44, 285-88, 299-301, and I cannot

psychologist’s curriculum vitae to me and the DOE Counsel the day before the hearing. As such, the DOE Counsel argued at the hearing that his ability “to competently cross-examine [the psychologist] on his opinion is substantially diminished.” Tr. at 19. I agree, and stated at the hearing that, while I would allow the testimony of the psychologist, I would take this into account in the weight I gave the testimony. *Id.* at 40.

completely rule out the “underincorporation” hypothesis offered by the testifying psychologist. There nonetheless remain glaring contradictions among the accounts presented by the individual in two QNSPs, in his PSI, and at the hearing, and there is nothing in the record that, in my opinion, comes close to providing a satisfactory explanation for these inconsistencies. As such, there are still serious and unresolved concerns regarding the individual’s reliability, trustworthiness and ability to protect classified information.

V. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises security concerns under Criteria F, K, and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth evidence to sufficiently mitigate the security concerns advanced by the LSO under Criteria K and L relating to his past illegal drug use and associations with users of illegal drugs, but not those concerns raised under Criteria F and L stemming from the contradictions among his various accounts of when he last used marijuana. I therefore cannot find that restoring the individual’s access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual’s access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: March 9, 2009